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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,490	04/15/2004	Bradley W. Johnson	720.898	8566
21707	7590	11/02/2006	EXAMINER	
IAN F. BURNS & ASSOCIATES P.O. BOX 71115 RENO, NV 89570			HOEL, MATTHEW D	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/825,490	Applicant(s) JOHNSON, BRADLEY W.	
	Examiner Matthew D. Hoel	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-75 and 77-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-75 and 77-81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The examiner notes the cancellation of Claims 1 to 39 and 76, the amendment of Claims 40, 44, 51, 56, 61, and 63, and the addition of Claims 78 to 81.

Response to Arguments

2. Applicant's arguments filed Aug. 28th, 2006 have been fully considered but they are not persuasive. The applicant states that Brosnan purports to disclose parallel games on a gaming device. Parallel games are nowhere claimed, so this is not relevant to the claim language. In any event, parallel games could mean two or more games played at the same time, or first and second, or more, games played sequentially. First and second games played sequentially could be a base game and a bonus game, such as that outlined by Thomas, et al. in EPO publication EP 0 945 837 A2. Brosnan teaches the first and second game outcomes being displayed simultaneously and the first and second games appearing to interact (Col. 4, Lines 25 to 43). The claims as written are very broad; the independent claims do not even specifically claim a roulette game, which is the primary embodiment of the applicant's specification. There are many different types of games which could reasonably be used to reject the independent claims as currently written. The applicant states that Claim 40 requires a dealer's position and at least two individual card wagering positions. This could be done by nearly any reference with a table or video game or poker, blackjack, etc. The

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claim language is very broad; one of the two individual wagering positions could be the dealer's position as the house can win money from the player and vice-versa and the dealer and the player are both individuals. The applicant states that Brosnan does not teach, disclose, or suggest the use of a dealer in the game or two card wagering positions. This was properly remedied by the 103 combination with Astaneha, which taught a dealer and two wagering positions (32, Fig. 1). Brosnan does suggest two wagering positions, as two or more players can play at the same time, each player seeing the other players' games (Col. 16, Line 48 to Col. 17, Line 9); the players' games can appear to interact, although the outcomes are determined separately (Col. 16, Lines 31 to 47). Since poker is one of the embodiments of Brosnan, it is possible for there to be more than one individual card wagering position in Brosnan. It would have been further obvious to combine Brosnan with Astaneha in light of the *in re Venner* decision, which makes it clear that it is obvious to automate a table game into an electronic or video embodiment, as long as all of the rules and such aspects of the game are identical: "Furthermore, it is well settled that it is not "invention" to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. *In re Venner*, 120 USPQ 192,1994 (CCPA 1958)." Nearly every card and roulette game that can be played on a casino table can be played in video or electronic format, and vice-versa. The few exceptions to this that come to the examiner's mind are not pertinent to the instant application. The applicant states that neither Brosnan nor Astaneha teach, disclose, or suggest a gaming device that has a display controlled by a controller that is adjacent to a dealer position. Astaneha in Col. 4, Lines 38 to 41

discloses "...a rotatable wheel to be rotated by a dealer and positioned adjacent the dice table, the rotatable wheel having a plurality of segmented areas with different numbers thereon..." (Fig. 1). This rotatable wheel is in a position adjacent to the dealer's position as the roulette wheel is spun by the dealer. In the video game format resulting from the 103 combination with Brosnan, there would be display controlled by a controller that is adjacent to a dealer position, as the dealer position and the roulette reel would both be shown on adjacent displays or shown adjacent to each other on the same display. The applicant states that Brosnan and Astaneha teach away from the applicant's invention, further stating that Brosnan is a slot machine. Brosnan is a video game embodiment of several types of games, among them pachinko, slots, keno, and cards. Slots and roulette games are actually analogous art as they are both wheel- or disc-shaped, indicia-bearing rotating objects, that upon stopping display an indicium indicative of an amount that may be won by the player. The only real (reel) difference is that slot reels are viewed from the circumferential edge and roulette wheels are viewed from the side of the disc. In addition, Brosnan teaches card games (Fig. 4) and multiple individual card wagering positions (Col. 16, Line 31 to Col. 17, Line 9), like Astaneha. The combination of Brosnan and Astaneha is obvious for the reasons outlined above. The combination of Brosnan and Astaneha was not gleaned through impermissible hindsight. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was

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within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Given that *in re Venner* was in 1958, it was well known in the art before the time of invention to automate processes that were previously mechanically done, so it would have been obvious to one of ordinary skill in the art to automate the table game of Astaneha to a video game embodiment as outlined above. Again, the applicant is merely referring to Brosnan as a slot machine to make this point, when it is a video game embodiment of many types of formerly mechanical games widely known in the art. The examiner respectfully disagrees with the applicant as to the claims' condition for allowance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 40-44, 46, 48-51, 54-64, 66-70, 72, 74, 75, 77, and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brosnan et al., U.S. Patent No. 6,656,040 B1 in view of Astaneha, U.S. Patent No. 6,302,395 B1. Brosnan discloses a gaming comprising a one round of a first game of chance having a first game outcome. The first game of chance allows the player to place a first wager at a game player position and potentially entitling the player to a first prize if a winning outcome occurs (See Brosnan col. 4 lines 25-42; Fig. 4 & 7). The first game of chance has a first game play area and includes a first wagering scheme, at least two individual card wagering positions and a first wager input (See Brosnan col. 4 lines 54-67). For example, the player may play two poker games in parallel and therefore there would be two individual card-wagering positions. A second game of chance has a second game play area and has a second game outcome. The second game of chance allows the player to place a wager and potentially entitling the player to a second prize if a winning outcome occurs. The second game of chance comprises, a second wagering scheme, a second game player area and a second wager input (See Brosnan col. 4 lines 25-67; Fig. 4; 7) [claims 40, 56, 61]. The first game outcome and the second game outcome are independent (See Brosnan col. 3 lines 45-50) [claims 41, 60, 64]. The award of the first prize is independent of the second game outcome and the award of the second prize is independent of the first game outcome (See Brosnan col. 3 lines 45-50) [claim 42]. The player may wager on either or both of the first and second games of chance (See Brosnan col. 8 lines 22-39; Fig. 7) [claim 48]. The first and second games of

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chance are operatively coupled to each other (See Brosnan Figs. 1 & 4) [claim 49]. The second game can have more than two outcomes (See Brosnan col. 3 lines 65-67; col. 4 lines 1-4) [claims 54, 61]. For example in poker, one could have a pair, or a flush, etc. The second game can also be keno (See Brosnan col. 4 lines 1-4) [claim 55]. The first game play area is a card wagering layout area where at least one card is dealt to the player (See Brosnan col. 3 lines 65-67; Fig. 4) [claims 57, 62]. For example, poker can be played. The player is allowed to place a wager on the second game of chance regardless of whether the player placed a wager on the first game of chance (See Brosnan col. 4 lines 25-67; Fig. 7) [claim 66]. The player is allowed to place a wager on a first game of chance having a first chance outcome by allowing the player to place a wager on a discrete card game layout the wagering scheme may be poker (See Brosnan Fig. 4) [claims 67, 72, 75]. The player is allowed to place a wager on a first wagering scheme and the step of allowing the player to place a wager on a second game of chance having a second game of chance outcome comprises allowing the player to place a wager on a second wagering scheme. The second wagering scheme being distinct from the first wagering scheme (See Brosnan col. 4 lines 25-67; col. 8 lines 22-39; Fig. 7) [claim 70].

Brosnan lacks in disclosing a table, a live dealer position and the game of roulette. Astaneha teaches of a combination, dice, card and roulette gambling game. Players play parts of either two or all three games on the same gaming table. The table has a live dealer position and first card wagering positions for the first game of chance at the table. The games are conducted by a live dealer (See Astaneha col. 4 lines 31-

48; col. 6 lines 50-67; col. 7 lines 1-2; Fig. 3) [claims 40, 50, 51, 56, 61]. At least one card is dealt to the player (See Astaneha col. 6 lines 50-53) [claim 62]. Astaneha teaches wagering card positions and the second game play area (roulette wheel, roulette being the second game) being mounted on a table (Fig. 1) [claim 79]. It would have been obvious to one of ordinary skill in the art to play the games of Brosnan at a gaming table simultaneously with a live dealer running the games. It has been well known throughout the art that casino games may be played at gaming tables with dealers. Astaneha clearly shows that more than one type of game can be played at a gaming table at one time. Therefore, by playing the plurality of games of Brosnan at a gaming a table simultaneously, players are not bored after a short time and therefore they will not retire from the game, as quickly which is desirable to the casino. Players also enjoy the personal contact with a live dealer versus an electronic machine. Furthermore, by playing multiple games at the same time, the amount of money a casino receives in wagers increases, make the combination of games playable together more profitable for the casino. Astaneha further discloses that a second game play area is a roulette betting area that is located between the dealer position and the card wagering position (See Astaneha Fig. 1) [claims 43, 58]. The roulette wheel is mounted adjacent to the roulette betting area (See Astaneha Fig. 1; col. 6 lines 22-26) [claims 59, 69]. The second game is roulette in which the dealer rotates the wheel (See Astaneha col. 6 lines 22-26) [claims 46, 63, 74, 76]. The player may wager on the second game of chance by allowing the player to place a wager on a discrete wheel game-betting layout (See Astaneha col. 6 lines 22-26) [claim 68]. The roulette wheel is spun and

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stopped (See Astaneha col. 6 lines 22-26) [claim 77]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have one of the secondary games of Brosnan be roulette. Roulette is a popular casino game that many players enjoy. Consequently, by including roulette as the secondary game, many more people would desire to play the game. It is further obvious to use a video display to display the roulette wheel, just as it is well known throughout the art to convert electronic games to table games it is just as obvious to convert table games to electronic games. Therefore, it is obvious to use an electronic video display for the wheel as one would in Brosnan. Some players enjoy the electronic displays while others enjoy actual wheels; therefore, by using both, one can appeal to both types of individuals. Concerning the newly added limitation of Claims 40, 56, and 61 of a game having a game display located adjacent to the dealer position, the game display being adapted to display the second game outcome, and a controller being in communication with the game display, the controller being adapted to control the game display—the combination of Brosnan and Astaneha would inherently have this as discussed in the response to the applicant's arguments. Astaneha in Col. 4, Lines 38 to 41 discloses "...a rotatable wheel to be rotated by a dealer and positioned adjacent the dice table, the rotatable wheel having a plurality of segmented areas with different numbers thereon..." (Fig. 1). This rotatable wheel is in a position adjacent to the dealer's position as the roulette wheel is spun by the dealer. In the video game format resulting from the 103 combination with Brosnan, there would be display controlled by a controller that is

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adjacent to a dealer position, as the dealer position and the roulette reel would both be shown on adjacent displays or shown adjacent to each other on the same display.

Claims 45, 71 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brosnan et al., in view of Astaneha, in further view of Huard et al., U.S. Patent No. 5,743,800. Brosnan and Astaneha lack in specifically disclosing that the first game is blackjack. Huard teaches of a first game of blackjack that has an auxiliary game. The first wagering scheme is a blackjack-betting layout (See Huard et al. col. 2 lines 50-55; col. 5 lines 1-33) [claims 45, 71, 73]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have blackjack be the first game of chance. Blackjack is a very popular casino game and would entice numerous players to play the game as well as the secondary game.

Claims 47 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brosnan et al., in view of Astaneha, in further view of Adams, U.S. Patent No. 5,911,418. Brosnan and Astaneha lack in disclosing requiring a player to wager on both the first and second games of chance. Adams teaches of a card game with a second game of chance. In order to play the second game of chance, i.e. spin the wheel, the player must have wagered on both the first game and second game (See Adams col. 2 lines 51-67) [claims 47, 65]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to require a player to bet on both games of chance. By requiring a player to bet on both games of chance, the casino makes more money since more bets are being placed. Therefore, it is profitable to have players bet on multiple games.

Claims 44, 51, 52, 53, 78, 80, and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brosnan et al., in view of Astaneha, in further view of Pohanka, U.S. Patent Des. 273,310. Brosnan and Astaneha lack in disclosing a wheel rotating about a horizontal axis or that the roulette betting area comprises a video display. Pohanka teaches of an electronic roulette game housing in which the rotatable wheel is mounted to the machine such that it may rotate about a horizontal axis and the roulette betting area comprises a video display (See Pohanka Fig. 1) [claims 52, 53]. Pohanka also teaches a roulette or rotatable wheel located above a video screen on a video gaming device. The combination of Brosnan, Astaneha, and Pohanka would thus have a roulette or rotatable wheel located above the roulette betting area, table, and first and second game play areas. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the wheel in Astaneha rotate about a horizontal axis. By rotating the wheel about a horizontal axis, the wheel would be clearly visible to more players since they would not have to gather around the wheel to see the outcome. Therefore, more people would be able to see the outcome of the game. It is also obvious to use a video display for the roulette betting area. By using a video display, bets can be processed electronically so that the dealer can concentrate on other functions of the game instead of the betting and it can be assured that the bets are accurately recorded.

Citation of Pertinent Prior Art

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Suttle, et al. in U.S. patent 4,948,134 A teach an electronic poker game with a dealer, multiple player positions, and a separate progressive wager. Parra, et al. in U.S. patent 6,299,533 B1 teach a progressive display for use with casino games. Thomas, et al. in EPO publication EP 0 945 837 A2, application 99105568.2, teach first and second games. Johnson in U.S. patent 6,743,094 B2 teaches a bonus game. Adams in U.S. patent 5,911,418 A teaches a card game with a roulette wheel. Luciano in U.S. patent 6,705,944 B2 teaches a multiple game apparatus. Jones in U.S. patent 7,025,354 B1 teaches a card game with a roulette bonus game. Thompson in U.S. patent 4,149,728 A, Tomaso in WIPO publication WO 87/02592 A1, Valdez in U.S. patent 5,934,999 A, and Adams in U.S. patent 5,848,932 A teach roulette games.


Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Hoel whose telephone number is (571) 272-5961. The examiner can normally be reached on Mon. to Fri., 8:00 A.M. to 4:30 P.M.
6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Matthew D. Hoel, Patent Examiner
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